[Mr. Kayalam Paramesvaran Pillai.]

Government to introduce a Bill immediately to bring them into force". Sir, this amendment goes against the motion that has already been carried. So this motion cannot be put to vote.

Chairman: I think that as the amendment of Mr. Tariatu Kunjitomman is conflicting with the amendment of Mr. E. P. Vargh se which has already been passed by this House, Mr. Kunjitomman's amen ment need not be put to the vote.

Mr. Tariatu Kunjitomman: എന്റെ ഉപക്ഷേപത്തെ ഞാൻ പിൻവലിക്കുന്നു.

The amendment was, by leave of the House, withdrawn.

Chairman: The House will now adjourn and meet again at 3. 30 P. M. to discuss the adjournment motion.

The House adjourned at 3-22 P. M. and reassembled at 3-30 P. M., Mr. N. Ramakrishna Pillai, one of the panel of Chairmen, presiding.

ADJOURNMENT MOTION *RE* THE CIRCULAR ISSUED BY THE DIRECTOR OF REGISTRATION.

Chairman: Mr. Narayana Aiyar will now move the motion for adjournment.

Mr. G. Narayana Aiyar: Sir, the subject-matter of my adjournment motion is the issue of the circular by the Director of Registration, which came into operation from the 1st Chingam 1111. The circular reads as follows:—

> "From and after 1-1-1111, all transactions between parties mentioned in the recital or body of a receipt for payment, which would be assessable to registration fees if stated in an instrument separate in itself, should have their value also taken into consideration in assessing the fee leviable on the record, unless the transaction or record or payment so referred to has been previously registered and the registration fee leviable on it had already been credited to Government. The assessment for fees need be made only on the total of the payments referred to in the recital. The registering officers should also see that references to marriages, divorce and similar relations between parties for the instruments evidencing which fixed fees are leviable, mentioned in the document, are not omitted from account in calculating total fee and stamp duty leviable on the receipt, if they are not referred to as having formed the subject of registered instruments already."

Mr. M. Govindan: Sir, I have a complaint to make. We are not furnished with copies of that circular.

Chairman: I understand that the relevant portion of the extract has been printed in the notice of the adjournment motion itself and that copies of it have been circulated yesterday.

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Mr. G. Narayana Aiyar: The question is whether the circular referred to to tax a receipt presented for registration is legal or proper. Before going into the propriety or otherwise of the circular it will be advisable to see whether there is any provision in the Registration Regulation itself justifying the procedure adopted in the circular.

Mr. E. P. Varghese: May I know whether this circular was published in the Gazette?

Mr. G. Narayana Aiyar: So far as I have been able to ascertain, it does not find a place in the Gazette. According to the Registration Regulation, the power of fixing fees is conferred under Section 72 on the Dewan. That Section specifically lays down that "with Our sanction, the Dewan shall prepare a table of fees payable." It specifically says that the Dewan shall fix the fees with Government sanction. Then, the table of fees is also given separately. Under the table the manner in which receipts are to be taxed is stated in article I (*j*). I will read the particular table also. It says—

> 'The value of a receipt for payment made shall be calculated with reference to the amount for which it actually purports to be a receipt, *previous payments mentioned in the receipt by way of recital being excluded from the calculation*".

This will clearly show that whatever may be mentioned about previous payments recited in the receipt it is only the actual payment made at the time of registration that has to be taxed.

Mr. P. Padmanabhan Tampi: Will the member kindly illustrate the way in which the fees are to be paid?

Mr. G. Narayana Aiyar: Suppose a transaction is entered into for Rs. 1,000. The debtor pays Rs. 900 in 9 instalments for each of which he gets a stamped receipt. For the last payment of Rs. 100 he wants to get a registered receipt. He produces it before the Registrar. In that receipt it will be stated that towards the amount due to you prior payments have been made to the amount of Rs. 900 and the balance of Rs. 100 I pay you just now. It is that receipt that has to be registered. Generally, under the provisions of this Rule I *j*), the registration fee to be paid is only the fee for Rs. 100 said to be paid at the time of registration of the receipt.

Mr. Kayalam Paramesvaran Pillai: May I know from the member whether that rule is to apply in the case where a false recital is made that Rs. 900 has already been received and the document purports to be a receipt for Rs. 100 though as a matter of fact Rs 1,000 is being paid on that day?

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Mr. G. Narayana Aiyar: The fee need be paid only for Rs. 100. It is not for the registrar to go into the intention of the parties and ascertain whether there is false recital in a deed or not.

Mr. M. Govindan: May I know from the member whether it is competent to the Sub-Registrar to determine whether a particular recital is false or not?

Mr. G. Narayana Aiyar: Certainly he is not authorised to determine that question. In this connection I shall submit that it has been held by the High Court that the object of a party to a suit should not be taxed and that what should be taxed is the actual relief sought for. This was the subject-matter of much discussion and, although there were rulings for and against, it was finally settled by their Honours in the F. B. case reported in 8 T. L. J. at page 218 (F. B.) corresponding to 34 T. L. R. at page 310. Their Honours had to consider whether a party's real object could be taxed as was done in the circular under discussion. It was held therein that,—

> "The Court has no jurisdiction to insist that a plaintiff should value his suit with reference to his real object as distinct from the apparent or ostensible object gatherable from the allegations made and the reliefs asked for in the plaint itself".

Mr. M. N. Paramesvaran Pillai: May I know whether that decision relates to the court fees or registration fees?

Mr. G. Narayana Aiyar: Court fees and registration fees come under fiscal legislation. Registrar's office is also a court.

Mr. Kayalam Paramesvaran Pillai: If a property is really worth Rs. 10,000 and the plaintiff says that it is worth only Rs. 1,000, will that be sufficient?

Mr. G. Narayana Aiyar: There the facts are different. That is not the particular instance I referred to. Suppose in a case the plaintiff with the ulterior object of getting at a property worth Rs. 1,000 sues for arrears of pattom of that property and values the pattom at Rs. 15.

Mr. M. Govindan: May I know whether any investigation is conducted with regard to the real value of the property that comes for registration?

Mr. G. Narayana Aiyar: Certainly not. Any nominal figure can be put in the registered deed as the Regulation stands. It is no part of the duty of the Sub-Registrar to see whether the consideration or value as stated in the deed is true or not and the legislature has not given him any such authority.

There is also another difficulty. Government must presume that everybody that goes to the Registrar's office goes with a good

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motive and not with a bad motive. Can the Government presume that the party goes with a bad motive, that the document does not recite the true amount, and that it is an attempt to dupe the Government of the actual fee that is due otherwise ? It can be seen from the particular rule that I read that it does not admit of any explanation whatsoever. It specifically says that the prior payments shall not be taxed. I therefore ask what is the authority for the Director of Registration to interpret it in a different way ? We ought to be guided by the terms employed in it.

Mr. Kayalam Paramesvaran Pillai: Does it not imply that prior payments must be a fact ?

Mr. G. Narayana Aiyar: It is no part of the Registrar's duty to inquire into it. I would ask the honourable member to give me any authority to show that the Registrar can enquire into the real facts. What are the powers of the Sub-Registrar ? He has simply to see that the parties appear before him, that they admit the execution, that they are identified by somebody else and that stamp duty and registration fees are paid on the facts as stated in the deed. He has no authority to go behind the document.

Mr. E. P. Varghese: May I know from the member whether the receipt that is given is not for the whole amount originally due though the receipt purports to be only a receipt for the last payment ?

Mr. G. Narayana Aiyar: Certainly not. I will quote another instance. Suppose the amount due under hypothecation bond is Rs. 1,000 and that Rs. 900 has been paid on various occasions and has been entered in the deed itself. This deed unfortunately happens to be lost. Then for paying the balance of Rs. 100 due he produces a receipt for registration since the original document is lost. Are you going to construe the receipt as if it were one for the whole amount of Rs. 1,000 ? If I am shown any authority for the Registrar to go into the object of the document, I shall withdraw my position.

Mr. E. P. Varghese: Does it not strike as a way of circumventing the Regulation and trying to defeat the Government of its revenue ?

Mr. G. Narayana Aiyar: Probably it may; we can't help it as the rule is clear. Sir, for that I have referred to 8. T. L. J., page 218. In civil courts the parties value their relief at a very small figure though they may aim at a very great relief. Their Honours in that case had to consider whether a party can be taxed for the real object and not for the relief "actually claimed in the plaint". It was held by the Full Bench that "the court had no

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[Mr. G. Narayana Aiyar.]

jurisdiction to insist that a plaintiff should value his suit with reference to his real object as distinct from the apparent or ostensible object gatherable from the allegations made and the reliefs asked for in the plaint itself.....The Court Fees Regulation and the Suits Valuation Regulation being statutes in which the legislature assumes to impose charges or taxes on the subject, the court in construing these statutes are not warranted in adding to the burdens so imposed in the absence of clear and unambiguous expressions of the intentions of the legislature."

So we are to be guided only by what appears on the face of the receipt. What was the practice that has been obtaining so far as these receipts are concerned till the date when this circular came into force? It was only the fee on the amount mentioned in the receipt that was realised. Without going into the details of the receipt, the Registrar takes the fee on the amount of the receipt. I think there was a prior circular in which also it was stated that no such amount should be taxed. It is not within the province of the Director of Registration to pass such a circular as the present one. I seriously dispute the competency of the Director of Registration to do so. What are his powers under the Regulation? Does the passing of this circular fall within the four corners of the powers given to him?

Mr. M. N. Paramesvaran Pillai: Is he not competent to issue a departmental circular?

Mr. G. Narayana Aiyar: Yes. But it could not be binding on the public. This is not such a circular but a taxing one. The public will be put to very serious loss. I cannot understand how he can take up an authority which is not given to him.

Mr. Kayalam Paramesvaran Pillai: Has any party complained about it to Government?

Mr. G. Narayana Aiyar: They are complaining locally. Serious complaints are raised in the newspapers also.

Mr. M. N. Paramesvaran Pillai: Is not the adjournment motion a way of complaining?

Mr. G. Narayana Aiyar: Yes. There will also certainly be a fall in income which will be noticed later on.

Mr. M. Govindan: May I draw the attention of the member to the last part which speaks of "compulsorily registrable transactions"?

Mr. G. Narayana Aiyar: I am coming to that. The circular also refers to taxing of marriages, divorce and similar transactions between parties made mention of in receipts. There is absolutely no warrant for the Director to include all these. Marriages, divorce, etc., are not always evidenced by deeds and such deeds, if any, are not always compulsorily registrable.

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As regards the powers of the Director to issue such a circular, these powers are contained in Chapter XXX, Rules 183 to 190. These rules say that he can appoint, dismiss or suspend or fine some of his subordinates, grant leave, etc. ,and nothing more. Then Rule 168 runs are follows :

> "The registering officer who is responsible for levying the fee, shall determine in the first instance what fee should be paid for a document presented for registration After it has been paid, the presenting party may, if he is dissatisfied, apply to the Director of Registration who shall, if he thinks there has been an over-charge, order the Sub-Registrar to refund any excess."

This is the only Section which finds a place in the statute about taxing. It says that the Sub-Registrar is the deciding authority for taxing. Parties may appeal to the Director of Registration for refunding the overpayment, if any, and if they are aggrieved.

Mr. Kayalam Paramesvaran Pillai : What will happen if there is under-payment ?

Mr. G. Narayana Aiyar : You will have to refer to the legislature. The legislature did not intend to deal with that.

Mr. Kayalam Paramesvaran Pillai : Does the member suggest that the Sub-Registrars can defraud Government of its revenues ?

Mr. G. Narayana Aiyar : Certainly not. Only men who know law are expected to be appointed as Sub Registrars.

Mr. P. Padmanabhan Tampi : Will the honourable member illustrate the last part of the circular ?

Mr. G. Narayana Aiyar : Ordinarily, marriage contracts need not be registered. So far as I am able to understand, in cases of marriages even under the Nayar Regulation, a bare petition to the Proverticar is sufficient compliance under the law and that even is not necessary in the case of others. If one party to the marriage presents a receipt to the Sub Registrar for the dowry paid, then the Sub-Registrar can say under the circular that the fee for the marriage contract according to the law should also be paid for the registration of such document. Suppose there is a decree for divorce providing for payment and a receipt is produced for such payment. The Sub-Registrar can say under the new circular that he will levy fees for the divorce also ignoring the decree of court for the divorce.

By no stretch of imagination was I able to make out that the circular could come within the authority of the Director of Registration. Can he take up a power which is not vested in him by law ? Under the law, if there is any omission, it should enure to the interests of the public and not of the Government. Fiscal or taxing statutes and laws should always be construed in favour of the subject if there is ambiguity in the same.

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[Mr. G. Narayana Aiyar.]

I, therefore, submit that, as the rules stand, the circular is *ultra vires* and is causing trouble to the public. It should not be given effect to but cancelled early enough.

Mr. P. Padmanabhan Tampi: Suppose a Brahmin takes Rs. 2,000 by way of dowry. Could not the Sub-Registrar ask for fees on that amount under the circular ?

Mr. G. Narayana Aiyar: Yes, for the marriage contracts also. So far as the Brahmin is concerned, no document is necessary for marriage and marriage contracts are not compulsorily registrable in all cases.

Mr. M. N. Paramesvaran Pillai: May I know whether there is any time-limit for speeches ?

Chairman: That is provided by the Rules. The mover may speak for not more than 15 minutes.

Mr. G. Narayana Aiyar: So I request Government to cancel this unauthorised circular as early as possible and redress the grievance of the public who are suffering very much.

Mr. M N. Narayana Menon: I second it.

Mr. Kochikal P. Balakrishnan Tampi: Sir, I support the motion on the ground that it tends to deviate from the legal enactment and gives more powers to the Director of Registration than the Registration Regulation gives him. The circular is also a fundamental violation of the well-recognised principle that all fiscal statutes should be construed in favour of the subject. Even in matters where there is doubt in the interpretation of statutes, it is well accepted that it must be construed in favour of the subject. As the mover of the motion pointed out, when there are certain documents which are not wanted by law to be registered, it is certainly illegal for the Director of Registration to insist upon the registration of these documents through the back door of departmental circulars. On that ground also, I very heartily second the motion moved by my honourable friend, Mr. G. Narayana Aiyar.

Mr. M. Govindan: I too support the motion. I think it is *ultra vires* of the Director of Registration to issue a circular which has the effect of amending substantially the provisions of the Regulation. The first part of it is against the provision of law read out by Mr. Narayana Aiyar. It is quite clear from the wording, that when a receipt gives a previous recital of some former payment, say of Rs. 900, and the document is only for Rs. 100, it is quite clear that what the document purports to do is to record the payment of Rs. 100, the other being only the recital of a former transaction. When I heard the Law Member putting questions to

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Mr. Narayana Aiyar, I was sadly disappointed. I thought that what ought to have come from the other side of the House was *bona fide* enquiries. The Law Member was assuming a position which I thought was not at all supportable in the eye of law.

Mr. Kayalam Parameswaran Pillai: What was that position?

Mr. M. Govindan : I am going to explain if my friend will be patient.

The mover of the motion distinctly urged, quoting the provision of law, that what purports to have been paid is the only taxable amount. In respect of former recitals, my friend put the question whether it is not possible, for a man who intends to defraud the Government of its revenue, to cite the bulk of the transactions as recital of a former payment. That is a fraud which a man may commit. In order to prevent a fraud which some dishonest man may commit, should honest men be mulcted? That is the question I would ask the Law Member. Why should the majority of persons who transact business at arms' length, and whose dealings are clear and above board, be asked to pay that which they are not bound under the law to pay? Moreover, is it proper for the Director by means of a circular to over-ride the express provisions of law? I have to urge strongly that the first part of the circular is quite *ultra vires* of the Director, even independent of the rulings of the High Court cited by my friend, Mr. Narayana Aiyar. But my friend, Mr. Narayana Aiyar, seems to have strengthened his position by quoting rulings to show distinctly that in fiscal matters officers of Government and courts of law should not go behind the express provisions of law in such a way as to burden the subject with unauthorised claims. But in this case even that is not necessary. My impression is that the law as embodied in the Registration Regulation itself gives the subject a right which is taken away by this circular.

Then with regard to the last portion, as suggested by me in a question and as accepted by my friend, the provision has the effect of making compulsorily registrable certain transactions which need not be registered. Marriages, divorce and similar relations between parties certainly are not compulsorily registrable according to law as it is. The effect of the following sentence namely, that "the registering officers should also see that references to marriages, divorce and similar relations between parties for the instruments evidencing which fixed fees are leviable, mentioned in the document, are not omitted from account in calculating total fee and stamp duty leviable on the receipt, if they are not referred to as having formed the subject of registered instruments already", is either they must have been already registered or are subject to registration now. That is

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certainly making them compulsorily registrable. That is amending Section 10 of the Registration Regulation by adding an additional provision thereto. Such an obviously unjust circular does not deserve the support of the other side of the House.

Mr. Kayalam Paramesvaran Pillai: Sir, as my name has been brought into the discussion by the last speaker, I think that it is my duty and my privilege to offer a few remarks on the subject. Firstly let me say that because I put certain questions to the mover of the motion it does not follow that I have assumed any position. I only wanted to draw attention to certain particular aspects of the question. I wanted to suggest that it is possible for a man to defraud Government of its revenue. There are honest and dishonest men and I do not say that because there are dishonest men who will attempt to defraud Government, honest men should be made to suffer on that score. I agree with the mover in saying that honest men should on no account suffer. All that I meant to suggest was that there is the possibility of fradulent men trying to defraud Government of its revenues.

Mr. K. P. Nilakanta Pillai: May I know whether it is the duty of the registering authority to say that there is consideration for a particular document?

Mr. Kayalam Paramesvaran Pillai: If it is necessary for the purpose of determining the duty or fee leviable then it is his duty.

Mr. K. P. Nilakanta Pillai: In view of that, may I know whether he is of opinion that the Director of Registration was in order in having issued the circular?

Mr. Kayalam Paramesvaran Pillai: This circular, Sir, is not a new thing. As was stated by Mr. Narayana Aiyar, there was a circular in 1096 issued by the then Director of Registration and that circular was mainly intended for the information of the registering officers. The purport of that and the one now issued is almost the same, and it has been accepted in the sense that there was no complaint against the circular. I may even say that the present Director of Registrtaion has only re-issued the circular that was in force long ago.

Mr. G. Narayana Aiyar: May I know whether, according to that, full registration fee was realised for recitals?

Mr. Kayalam Paramesvaran Pillai: To some extent fees must have been realised.

So, there was a circular in 1096 which was accepted in the sense that there was no complaint at all about it. It was found that it was liable to be interpreted in different ways.

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Mr. P. Padmanabhan Tampi : May I know who accepted that circular ?

Mr. Kayalam Paramesvaran Pillai : By everybody, in the sense that nobody complained against it.

Mr. P. Padmanabhan Tampi : May I know whether that was published in the Gazette ?

Mr. Kayalam Paramesvaran Pillai : Probably not. Anyway the provisions of the circular were being worked and nobody complained about it.

Mr. M. N. Paramesvaran Pillai : May I know whether that circular was in conformity with the Registration Regulation ?

Mr. Kayalam Paramesvaran Pillai : If the House wants to know the contents of it, Mr. Mathew will read it out in his speech.

Mr. M. N. Paramesvaran Pillai : May I know whether the member has seen that ?

Mr. Kayalam Paramesvaran Pillai : Yes.

Mr. M. N. Paramesvaran Pillai : What is the member's opinion on it ?

Mr. Kayalam Paramesvaran Pillai : I do not express any opinion now. I am only saying that the present circular is in furtherance of the circular that was in force.

Mr. P. Padmanabhan Tampi : Does the member know how long that circular was in force ?

Mr. Kayalam Paramesvaran Pillai : For the last 14 years or so.

Mr. K. P. Nilakanta Pillai : Can the member cite a single instance in which fee was levied according to that circular ?

Mr. Kayalam Paramesvaran Pillai : There are many instances.

Mr. M. Govindan : If that circular was against the provisions of law, can the present circular be justified ?

Mr. Kayalam Paramesvaran Pillai : If that was against the provisions of law, certainly it cannot be justified.

I am only trying to show the circumstances that led to the issue of the present circular.

Mr. K. P. Nilakanta Pillai : Has the member read the circular ?

Mr. Kayalam Paramesvaran Pillai : Yes.

Mr. K. P. Nilakanta Pillai : Is there any comparison between the 1096 circular and the present one ?

Mr. Kayalam Paramesvaran Pillai : There is.

Mr. M. N. Paramesvaran Pillai : May I know whether this circular is in amplification of the previous circular ?

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Mr. Kayalam Paramesvaran Pillai : The member can read it for himself.

Mr. M. N. Paramesvaran Pillai : What exactly is the member's opinion I would like to know; whether it is illegal or not.

Mr. Kayalam Paramesvaran Pillai : I am not saying about that now. If it is illegal, there is no justification for maintaining the present circular.

Mr. M N. Paramesvaran Pillai : What is the Law Member's opinion regarding that ?

Mr. Kayalam Paramesvaran Pillai : I do not express any opinion now.

Mr. S. Piraviperumal Pillai : Will not the member be prepared to help us in coming to a decision ?

Mr. Kayalam Paramesvaran Pillai : I must study the question carefully and then only can I give an opinion.

Mr. M. N. Paramesvaran Pillai : At the time when the circular was issued, were the provisions of the Regulation thought of ?

Mr. Kayalam Paramesvaran Pillai: All that I can say is that a circular was issued in 1096. It was in explanation of that circular that the present one was issued. I do not want to say that it is justifiable. Nor do I want to suggest that the circular is illegal. I am only saying that the present circular is not a creation of the moment conceived by the present Director of Registration. The circular that was in existence years ago was accepted in the sense that there were no complaints at all.

Mr. K. P. Nilakanta Pillai : What is the basis for the member's information that no complaint was received ?

Mr. Kayalam Paramesvaran Pillai : Because no complaint has been received.

Mr. K. P. Nilakanta Pillai : Does the member know that so soon as the circular was issued, a deputation waited on the then Director at Alwaye to withdraw it ?

Mr. Kayalam Paramesvaran Pillai : No. But I take it that the member's suggestion is correct.

Mr. P. Padmanabhan Tampi : Does the member know that the then Director of Registration ordered that the circular should not be put into force ?

Mr. Kayalam Paramesvaran Pillai . No.

Mr. P. Padmanabhan Tampi : Then how did the member say that the circular was being worked ?

Mr. Kayalam Paramesvaran Pillai : There has been no complaint so far.

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Mr. P. Padmanabhan Tampi: May I know the number of documents registered under that circular ?

Mr. Kayalam Paramesvaran Pillai: I do not know that. If there was some deputation to the Director, I am sure the matter must have been examined by some competent authority and the legality or otherwise of it must have been found. So long as it has not been declared illegal and so long as no complaint has been received, I should think that the circular was found, rightly or wrongly, to be justifiable.

Mr. M. N. Paramesvaran Pillai: May I ask, if that circular was given effect to, what was the necessity for passing this circular?

Mr. Kayalam Paramesvaran Pillai: That circular was being interpreted, at any rate differently interpreted, by different Sub-Registrars and District Registrars. There have been representations that that circular should be interpreted in that way and this way and so on. To illustrate one registering officer might have levied Rs. 5 and then the District Registrar on verification might have found that Rs. 6 ought to have been levied and thereby realised the balance of one rupee from that registering officer, or the party might have complained that the fee levied was too much and the Director of Registration might have examined the matter and found that the Sub-Registrar was right. In case of mistakes, refunds might have been ordered. It was found that, in some cases, there has been short levy of fees.

Mr. M. N. Paramesvaran Pillai: May I know whether the audit section of the Account Office has found out this ?

Mr. Kayalam Paramesvaran Pillai: But so far as I know, it was the District Registrar who found out such short levy of fees and the Registrar was asked to pay up the amount short-levied. Then the complaint was raised that the circular was wrongly interpreted by the District Registrar.

Mr. K. P. Nilakanta Pillai: May I know the object of having passed the Registration Regulation ?

Mr. Kayalam Paramesvaran Pillai: I am not prepared to answer that in this debate.

Mr. K. P. Nilakanta Pillai: Is it not the object of the Regulation to enhance the fees for certain documents ?

Mr. Kayalam Paramesvaran Pillai: I accept that position.

There might have arisen complaints from the party also to say that he was asked to pay enhanced fees. The Registrar might have interpreted the circular, and levied a certain fee, the District Registrar might have interpreted the circular in a still different way

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and found the levy of fees as short-levied. All these circumstances have led the present Director of Registration to issue a circular, so that there may be a definite interpretation put upon the old circular.

Mr. G. Narayana Aiyar: May I know, when such complaints were received?

Mr. Kayalam Paramesvaran Pillai: They were noted in inspection diaries of District Registrars and the Director, I understand, was also spoken to by the District Registrars.

Mr. G. Narayana Aiyar: Can the member give the exact date of receipt of complaints?

Mr. Kayalam Paramesvaran Pillai: Mr. Mathew will deal with them in his speech.

Mr. M. N. Paramesvaran Pillai: What is the Law Member's interpretation of the circular?

Mr. Kayalam Paramesvaran Pillai: All that I can now say is that the original circular was re-issued by the present Director.

Mr. K. P. Nilakanta Pillai: Whether the circular was issued or re-issued, whatever that is, was the Director in order in having done so?

Mr. Kayalam Paramesvaran Pillai: I was only saying the circumstances under which the present circular happened to be issued. It was not a novel step of the present Director who came in 1110. Some circular was in existence for the last 14 years; in spite of that no complaint was received about it. Now that was amplified, perhaps to a larger scope.

Mr. S. Piraviperumal Pillai: Is that a legal circular?

Mr. Kayalam Paramesvaran Pillai: I will come to that later on.

Mr. K. P. Nilakanta Pillai: May I know whether the Government are in a position to withdraw that circular?

Mr. Kayalam Paramesvaran Pillai: I cannot say that now.

Mr. M. N. Paramesvaran Pillai: If the 1096 circular was found to be illegal under law, what is the necessity for quoting that as a precedent in re-issuing the circular now in force?

Mr. Kayalam Paramesvaran Pillai: If it is illegal, then I grant that there is no meaning in quoting that circular in justification of the present circular.

Mr. M. N. Paramesvaran Pillai: May I know whether the member could enlighten the House on this point.

Mr. Kayalam Paramesvaran Pillai: Not now. The present circular is not the initiative of the present Director of Registration. He has merely re-issued the circular of 1096. There has been some complaint about this circular and the matter is now being

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examined by the law officers of Government. If, on examination it is found to be illegal, then the Government will take appropriate action. Until then the matter must stand.

Mr. M. N. Paramesvaran Pillai: May I know whether the head of a department issues a circular after consulting the law officers ?

Mr. Kayalam Paramesvaran Pillai: Not necessarily.

Mr. M. N. Paramesvaran Pillai: In this particular case, may I know whether the Law Department was consulted ?

Mr. Kayalam Paramesvaran Pillai: No.

As soon as complaints arose the matter was placed before the law officers and that is now being examined. So then, the subject is now in the hands of the law officers. If they find the circular illegal, appropriate action will be taken.

Mr. K. P. Nilakanta Pillai: May I know, if they have bestowed some consideration upon the matter, what is the opinion of the Law Member with regard to the legality of the circular ?

Mr. Kayalam Paramesvaran Pillai: That question has been put to me in two or three different forms. I will frankly say that I have not yet looked into the question. I read the circular only just now. If I have read it yesterday I would have been able to give a definite opinion to-day.

Mr. K. P. Nilakanta Pillai: May I know whether this circular was issued with the knowledge of the Government ?

Mr. Kayalam Paramesvaran Pillai: It was issued by the Director of Registration.

Mr. K. Madhavan Pillai: May I know why the Law Member did not say that yesterday ?

Mr. Kayalam Paramesvaran Pillai: I did not know the facts at that time. As a matter of fact if I had known that, I would have certainly given that information because in that case, the time taken by this motion would have been available for the consideration of other business.

Mr. E. I. Mathew: The rules about the fees to be levied on documents issued by Government are under Section 72 of that Regulation. The present Regulation was passed in 1087. Along with that Regulation a table was published for the rates of fees to be levied. In 1096 the then Director thought that the rules needed some amplification and, for convenience, he adopted the wording of the Madras table of fees and rules. There was no intention at all to change the law then existing. Still, by importing certain matters from the Madras manual into the body of the table of fees, a difference of opinion happened

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[Mr. E. I. Mathew.]

to be possible. This table, on which the honourable members rely, is only a departmental ruling found in the Madras manual and not in the body of the table of fees there. Section 72 authorises Government to prescribe a table of fees only. The other things are left to the discretion of the departmental heads.

Mr. M. N. Paramesvaran Pillai : May I know whether the Government member's attitude is that he has got a right to prepare a schedule against the provisions of the law ?

Mr. E. I. Mathew : No; I did not say so. I am explaining why this circular happened to be necessary. Till 1096, the fees levied on receipts was after deducting whatever portion that was paid under a registered receipt. That was the law till 1096. Then the present rules came into force and the directions in table (1) (*j*) to be acted upon.

The rule is as follows :

> "The value of a receipt for payment made shall be calculated with reference to the amount for which it actually purports to be a receipt, previous payments mentioned in the receipt by way of recital being excluded from the calculation."

This opened a wide door for leakage of revenues of the Government. A man going to a Sub-Registry office to get a receipt for the payment of a thousand rupees, on going there, used to say that he had already paid Rs. 995 beforehand and therefore he need pay a fee only for Rs. 5 paid at the Sub-Registry office. This comes only to half-a-rupee.

Mr. P. Padmanabhan Tampi : May I know whether there is any rule directing that the Registrars should go into the actual state of affairs mentioned in the document ?

Mr. E. I. Mathew : The circular of 1096 enjoined this on the Sub-Registrar. It is such malpractices of the document-writers that have to be guarded against.

Mr. Kochikal P. Balakrishnan Tampi : So, was the departmental order an improvement upon the Legislature ?

Mr. E. I. Mathew : No. It was only an explanation.

Mr P. Padmanabhan Tampi : May I know why then the previous Director did not issue such a circular ?

Mr. E. I. Mathew : The then Director did think that he had power to issue a circular and he issued one.

Mr. P. Padmanabhan Tampi : May I know why then the present Director issued such a circular ?

Mr. E. I. Mathew : I thought it necessary to issue a circular to secure uniformity of practice on points on which differences of opinion arose among the District Registrars and even among my predecessors.

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Mr. P. Padmanabhan Tampi: May I know why the present Director thought that he can issue such a circular in spite of the Regulation?

Mr. E. I. Mathew: There was no inconsistency. What was needed was a uniformity in interpretation and the present Director had the benefit of the advice of senior Sub-Registrars and District Registrars. It was, in fact, issued on the strength of such advice.

Mr. M. N. Paramesvaran Pillai: May I know whether the departmental head had taken the advice of the law officers of Government in this matter, when there was such difference of opinion?

Mr. E. I. Mathew: Difference of opinion was due to want of uniformity in the matter. At one time, one Registrar may think one way and at another time another way. There was difference of opinion between successive Directors also. Even the same Director used to give different orders at different times.

Mr. M. N. Paramesvaran Pillai: May I know why he thought it was not necessary to have the opinion of the law officers of Government?

Mr. E. I. Mathew: Because what I had done was found to be in conformity with existing practice. Seeing this vast leakage, the then Director issued the circular of 1096. I shall read it.

രജിസ്ട്രേഷൻ ഡയറക്ടരാഫീസ്,
തിരുവനന്തപുരം,
൧൦൯൬ ഇടവം ൧൫-ാംനു,
സർക്കുലർ.

പുതിയ രജിസ്ട്രേഷൻ റൂൾസോടു ചേർത്തിട്ടുള്ള ഫീസ് പട്ടികയിലെ ൧-ാം ഖണ്ഡം ൪. പിരിവിന്റെ താൽപര്യം രജിസ്ട്രേഷൻ ഉദ്യോഗസ്ഥന്മാർ ശരിയായി മനസ്സിലാക്കാത്തതുകൊണ്ടു രജിസ്റ്റർ ചെയ്യുന്നതിനു കാരണമാകുന്ന രസീതുകൾക്കു ഫീസ് ഈടാക്കുന്ന വിഷയത്തിൽ...

Mr. M. N. Paramesvaran Pillai: May I know whether the circular was issued in English or in Malayalam?

Mr. E. I. Mathew: In malayalam. തെറ്റുകൾ വരുന്നതായും പല കച്ചേരികളിലും പല വിധത്തിൽ ഫീസ് ഈടാക്കിവരുന്നതായും കാണുന്നു. കാരണമാകുന്ന പ്രമാണം ഏതു സംഖ്യക്കു രസീതായി ഗണിച്ചിരിക്കുന്നുവോ അതുയും സംഖ്യയ്ക്കു ഫീസ് തീർച്ചപ്പെടുത്തുവാൻ മതിയാകുമെന്നും അപ്രകാരം സംഖ്യ നിർണ്ണയിക്കുന്നതിനുവേണ്ടി മുൻപു പറഞ്ഞിട്ടുള്ള സംഖ്യകളെ രസീതിൽ വിവരിച്ചിരുന്നാൽ അങ്ങിനെ വിവരിച്ചിട്ടുള്ള

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[Mr E. I. Mathew.]

സംഖ്യകൾക്കു ഫീസ് തീർപ്പിക്കേണ്ട ആവശ്യമില്ലെന്നുമാണു മേൽവിവരിച്ച ജെ പിരിവിന്റെ താൽപര്യമെന്നു ഇംഗ്ലീഷിലും മലയാളത്തിലുമുള്ള ആ രൂപം വായിച്ചുനോക്കിയാൽ വ്യക്തമാകുന്നതാണ്. എത്ര സംഖ്യക്കാണ് ഒരു രസീതെന്നു നിർണ്ണയിക്കുന്നതു് ആ രസീതു മുഴുവൻ വായിച്ചുനോക്കി വേണ്ടതാണ്. ...

Mr. S. Piraviperumal Pillai : Does the member think that when even the Law Member is not able to pronounce his opinion, he will be able to pronounce his opinion now ?

Mr. E. I. Mathew: No. Something had to be done and that something has been done. I am only explaining to the House that nothing novel has been done.

Mr. P. Padmanabhan Tampi: May I know from the member whether the wording "മുഴുവൻ വായിച്ചുനോക്കി" means that fees should be levied for the whole amount referred to therein?

Mr. E. I. Mathew: That is the question I am coming to.

രൊക്കംപറ എന്നമാത്രം വിവരിച്ചിട്ടുള്ള സംഖ്യ ഒരു രസീതിന്റെ ആത്മസംഖ്യയായി എല്ലാവിഷയത്തിലും എടുക്കാൻ പാടില്ല. മുൻപു പറഞ്ഞിട്ടുള്ള സംഖ്യകളെ വിവരിക്കുക എന്നുള്ളതു മുൻപറയു എന്നമാത്രം പറഞ്ഞതുകൊണ്ടു മതിയാകുകയില്ല. മുൻപു പറഞ്ഞിട്ടുള്ളതു ഏതെങ്കിലും രജിസ്റ്റർ രസീതിൻപ്രകാരമായിരുന്നാൽ അതിന്റെ നമ്പർ മുതലായതും രജിസ്റ്റർ ചെയ്യാത്ത രസീതായിരുന്നാൽ ഇന്നയാണ്ടു ഇന്നമാസം ഇത്രാംതീയതി എഴുതിയുണ്ടാക്കിയതു എന്നും വിവരിച്ചിരിക്കേണ്ടതാണ്. അങ്ങിനെ വിവരിക്കാതെ മുൻപറയു എന്നമാത്രം പറഞ്ഞിരുന്നാൽ അതു ഒരു രസീതുംപ്രകാരം പറഞ്ഞിട്ടുള്ള സംഖ്യ അല്ലെന്നും ആ സംഖ്യക്കുകൂടി ഇപ്പോഴത്തെ പ്രമാണമാണു രസീതായി ഗണിച്ചിട്ടുള്ളതെന്നും തീർച്ചയാക്കാവുന്നതാണ്. അതുപോലെ തന്നെ രസീതു ആരുടെ പേക്കു് എഴുതികൊടുക്കുന്നുവോ അയാളിനു വേറെ ഏതെങ്കിലും വകയിൽ ചെല്ലുവാനുള്ള സംഖ്യ വകവച്ചു പറഞ്ഞിയെന്നോ അല്ലെങ്കിൽ ഒടുക്കുള്ള സംഖ്യയിൽ ഏതെങ്കിലും ഭാഗം വേറെ ആക്കെങ്കിലും കൊടുപ്പിച്ചു പറഞ്ഞിയെന്നോ മാത്രം വിവരിച്ചിരുന്നാൽ അതെല്ലാം പ്രസ്താവ രസ്തുംപ്രകാരം പറയുന്ന സംഖ്യയായി ഗണിച്ചുകൊള്ളേണ്ടതാണ്. അതിനാൽ മേൽവിവരിച്ച ഭാഗങ്ങൾ എല്ലാ രജിസ്റ്റർ ഉദ്യോഗസ്ഥന്മാരും ശരിയായി മനസ്സിലാക്കി രസീതുകൾക്കു ഫീസു തീർപ്പിക്കേണ്ടതാകുന്നു.

ഡയറക്ടർ കെ. പരമേശ്വരൻ പിള്ള, (ഒപ്പു).

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Mr. E. P. Varghese: May I know whether, in spite of the circular, there have been instances in which fees have not been realised?

Mr. E. I. Mathew: There have been such instances.

Mr. E. P. Varghese: May I know whether there have been receipts which have not been taxed to fees?

Mr. E. I. Mathew: Yes, that is what led to the present circular.

Mr. G. Narayana Aiyar: May I know whether the particulars of the receipt should be stated or whether only the particular date need be mentioned?

Mr. E. I. Mathew: That is qualified by the statement that the whole thing should be read to understand the gist of the document. In some cases the Sub-Registrars were asked, on the opinion of the District Registrar, to pay the deficiency in fees. In other cases, a different procedure was being adopted. So, when I went on tour, several officers complained to me and requested me to lay down a rule, one way or the other, and to circularise it so that the Sub-Registrars may not be put to unexpected losses whenever there is a change in the District Registrars or even when the latter changed their minds unwittingly.

Mr. K. P. Nilakanta Pillai: May I know from the Director whether, after the issue of the circular of 1096, that was subsequently modified?

Mr. E. I. Mathew: No, there is no record to show any such action.

Mr. K. P. Nilakanta Pillai: May I know whether, even after the issue of this circular some 10 or 12 years back, the orders subsequently issued were uniform throughout?

Mr. E. I. Mathew: Not entirely.

It is one of the duties of the Sub-Registrars to see that proper fee is levied; and if there is any deficiency, that can be realised from them under Rule 150. Only the Director can excuse them. From inspection diaries I find that, in several cases, when Sub-Registrars realised only half a rupee, they have been asked to pay Rs. 4½ more because the receipts referred to marriages or divorces in the body.

Mr. M. Govindan: May I know from the member whether the English circular that is placed before us does not go much further than the Malayalam circular that is read out now?

Mr. E. I. Mathew: No. It will be seen that it is only an explanation to introduce a uniformity in the procedure. Now, in the case of endorsements on hypothecation and mortgage deeds

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[Mr. E. I Mathew.]

which, under Section 10, are compulsorily registrable, the addition of table 1 (*j*) would enable a party to get registry of an endorsement on a hypothecation deed which purports to pay in cash only Rs. 10 without paying fee on the full amount. The amount in the hypothecation deed may be Rs. 1,000 on which a fee of Rs. 4 is due under the Regulation. Whereas under the rules issued under it, the party can manage to escape with paying only half a rupee. A rule issued under a Regulation cannot override the clear provisions of the Regulation. There was that difficulty also in regard to table 1(*j*). To get over the difficulty, I found that accepting the position which was in existence before the issue of the rules in 1096 as the right one—that is, to exclude only all payments made under registered receipts— will safeguard the obligation of compulsory registrablity of the endorsement on hypothecation deeds enjoined by Section 10. That will bring the state of affairs to what it was before 1096, and which the rules did not purport to alter. But, according to the circular issued in 1096, payments in the recital under unregistered receipts of amounts secured on hypothecation deeds were escaping assessment. This was illegal under the Regulation. So, to get over the illegality in that the explanation militates against the provision of comsulsory registration under the Regulation and to safeguard the Sub-Registrar who was being put to a lot of difficulties, the present circular was issued. Of course, there is the other side also. The parties under the advice of document writers...

Mr. E. P. Varghese : Does it not give room for corruption also ?

Mr. E. I. Mathew : People may take advantage of the situation. There is also leakage of revenue. As an example of leakage of revenue I will point out one instance. One District Registrar told me that, when he was inspecting an office, an acquaintance of his came there to discharge a debt of Rs. 5,000. He heard about it from the party in the morning. In the evening, when the Registrar examined the document, he found that the party had paid only Rs. 5 in cash and had got the document registered for a fee of Re. ½. If he had stated that he had paid the whole amount in cash, he would have had to pay a fee of Rs. 5. This is the sort of leakage of revenue that was going on. It was to get over such cases that I put in the interpretation in the circular.

Mr. M. N. Paramesvaran Pillai : May I know from the Director whether he has recommended the amendment of rules to Schedule 1, clause (*j*) in conformity with the circular that he has issued ?

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Mr. E. I. Mathew : Following the policy of the Director of 1096, I did not consider it necessary. That was the view of the senior officers in the department also.

Mr. M. N. Paramesvaran Pillai : Does the member think of the expression in clause 1 (*j*), and that, even in spite of that provision, he is competent to issue this circular and levy fees.

Mr. E. I. Mathew : I was only laying instructions on the lines adopted by predecessors of mine.

Mr. M. N. Paramesvaran Pillai : Am I to understand from the Director that if his predecessor had blundered, he should also follow that course ?

Mr. E. I. Mathew : Whether he has blundered is a matter of opinion.

Mr. M. N. Paramesvaran Pillai : Am I to understand that the circular is in conformity with the provisions of law ? Is that the Director's opinion ?

Mr. E. I. Mathew : That was my belief when I issued it and that was the belief with my predecessor also.

Mr. M. N. Paramesvaran Pillai : Am I to understand that it was his belief that led up to this interpretation of the law ?

Chairman : You have taken already 15 minutes. How much more time will you take, Mr. Mathew ?

Mr. S. Piraviperumal Pillai: Sir, a point of order. Rules relating to time limit for speeches are laid down in Rules 23 (2) and 65 of the Legislative Rules. Rule 23 (2) specifically says that no speech during a debate on an adjournment motion shall exceed 15 minutes. And Rule 65 says that, except with the permission of the President, no speech shall exceed ten minutes in duration, provided that the mover of a resolution when moving the same, and the official member in charge of the subject, may speak for twenty minutes. Here, the debate is on an adjournment motion and therefore Rule 23 (2) has to be applied which clearly says that the time shall not exceed 15 minutes. And even the President cannot permit the member to speak for any longer time.

Mr. Kayalam Paramesvaran Pillai : Will you please read the first part of that Rule also ?

Mr. S. Piraviperumal Pillai : The first part says nothing about time-limit.

Chairman : How much more time do you want Mr. Mathew?

Mr. E. I. Mathew : About 5 minutes.

Chairman : I will allow you 5 minutes more.

Mr. E. I. Mathew : Sir, the situation was this. The Sub-Registrars.....

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Mr. K. P. Nilakanta Pillai: May I know from the Director of Registration whether he is in a position to own independently the parentage of this circular or he owns it along with others ?

Mr. E. I. Mathew: Well, Sir, I would not have issued this circular but for the existence of the previous circular.

Mr. K. P. Nilakanta Pillai: Having read out the circular before the House and having read it out alone, does that circular contemplate the levy of any additional fee ?

Mr. E. I. Mathew: Which circular ?

Mr. K. P. Nilakanta Pillai: The circular issued by the learned Director's predecessor. Does that contemplate the levy of additional fee, directly or indirectly or expressly or impliedly ?

Mr. E. I. Mathew: That was how it was interpreted. I gave two or three examples where fees levied under the previous rules are not levied now.

The private parties who go to the Sub-Registry office are not practically affected, because they go to the office prepared to pay fees. It is only in the Sub-Registry office that evasions take place.

Mr P. Padmanabhan Tampi: Having heard so far, may I know whether the Director will be prepared to withdraw the circular.

Mr. E. I. Mathew: If it is found beyond the competency of the Director, it will be withdrawn in consultation with Government.

Mr. P. Padmanabhan Tampi: After hearing from the non-official side about the illegality of the circular, will the circular be withdrawn by the Director or by the Government ?

Mr. E. I. Mathew: Well, there is a definite leakage of revenue to be safeguarded and that is why the circular was issued. And there was also the precarious condition of the registering officers who had to make good the loss. If it is pronounced to be illegal, it will be withdrawn.

Mr. E. P. Varghese: May I know whether the circular has been sent to the law officers for their opinion?

Mr. E. I. Mathew: The matter has been placed before the Head Sirkar Vakil first.

Mr. G. Narayan Aiyar: After having heard the Director of Registration, I am not satisfied that his arguments have been convincing enough to justify the legality of his action in having issued the circular. He has exceeded his authority in issuing the circular without any foundation. Even in the prior circular he says all the particulars of the deed alone need be mentioned

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The Director was not able to quote specific instances in which a different position was taken. So long as the circular is irregular and beyond the power of the Director to issue, I submit, it should not be maintained any more, and that it should be immediately cancelled.

Mr. E. I. Mathew : By specific instances, does the member refer to the extracts which I mentioned ?

Mr. G. Narayana Aiyar : No.

Sir, I press the motion.

The motion was put to the vote and carried.

Mr. M. N. Paramesvaran Pillai : I demand a pol Sir.

A poll was taken and the house divided as follows :—

For—19.

1. Mr. V. S. Arumukham Pillai
2. ,, Kochikal P. Balakrishnan Tampi
3. ,, M. Govindan
4. ,, J. John Kattakayam
5. ,, C. M. Joseph
6. ,, K. N. Kesavan Namputiripad
7. ,, K. Madhavan Pillai
8. ,, M. P. Madhavan Pillai
9. ,, G. Narayana Aiyar
10. ,, M. N. Narayana Menon
11. ,, K. P. Nilakanta Pillai
12. Mr. K Padmanabha Panickar.
13. ,, N. K. Padmanabha Pillai
14. ,, P. Padmanabhan Tampi
15. ,, M. N. Paramesvaran Pillai
16. ,, S. Piraviperumal Pillai
17. ,, K. Rama Varma Raja
18. ,, K. Sankaralingam Pillai
19. ,, A. N. Visvanatha Pillai

Against—14.

1. Mr. C. V. Chandrasekharan
2. ,, K. George
3. ,, William Foster Inman
4. ,, K. N. Kesava Pillai
5. ,, Tariatu Kunjitomman
6. ,, C. O. Madhavan
7. ,, E. I. Mathew
8. Mr. R. Nilakanta Pillai
8. ,, Kayalam Paramesvaran Pillai
10. ,, R. Pitchu Aiyangar
11. ,, Komilezhathu Sankaran
12. ,, T. C Thommen
13. ,, G. B. E. Truscott
14. ,, E. P. Varghese

Neutral—1

1. Mr. Adam Sait

Chairman : The result is, for 19, against 14, neutral 1.

The motion is carried.

The house will now adjourn to meet again to-morrow.

The house adjourned at 4.42 P. M.

P. PARAMESVARAN PILLAI,
Secretary to the Sri Chitra State Council.

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